



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[Docket No. PRM-2-15; NRC-2015-0264]

Agency Procedures for Responding to Adverse Court Decisions and Addressing Funding Shortfalls

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of docketing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a petition for rulemaking (PRM) requesting that the NRC amend its rules of practice and procedure to establish procedures for responding to adverse court decisions and to annually report to the public each instance where the NRC does not receive “sufficient funds reasonably necessary to implement in good faith its statutory mandates.” The petition, dated October 22, 2015, was submitted by Mr. Jeffrey M. Skov (the petitioner). The petition was docketed by the NRC on November 10, 2015, and was assigned Docket Number PRM-2-15. The NRC is examining the issues raised in this petition to determine whether they should be considered in rulemaking. The NRC is not requesting public comment on PRM-2-15 at this time.

DATES: The PRM is available on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Please refer to Docket ID NRC-2015-0264 when contacting the NRC about the availability of information for this petition. You may obtain publicly-available information related to this petition by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2015-0264. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**
You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: For technical questions contact Mr. Ian Irvin, Office of the General Counsel, telephone: 301-415-3138, e-mail: Ian.Irvin@nrc.gov. For questions related to the petition for rulemaking process contact Mr. Anthony de Jesús, Office of Administration, telephone: 301-415-1106, e-mail: Anthony.deJesus@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. The Petitioner

The petitioner, Mr. Jeffrey M. Skov, states, among other things, that his “interest is in securing for the NRC and the nation” benefits that would “[e]nhance public safety and health,” “[r]educe costs,” and “[a]lign NRC’s practices with its principles.”

II. The Petition

The petitioner requests that the NRC amend part 2 of title 10 of the *Code of Federal Regulations* (10 CFR), “Agency rules of practice and procedure,” to establish procedures for (1) responding to adverse court decisions, and (2) annually reporting to the public each instance where the NRC does not receive sufficient funds reasonably necessary to implement in good faith its statutory mandates. The petition is available in ADAMS under Accession No. ML15314A075.

III. Discussion of the Petition

The petitioner proposes that the NRC issue two new rules to address concerns about the NRC’s actions in response to the August 13, 2013, decision in *In re: Aiken County* ruling¹ by the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit Court”). The petitioner requests that the NRC issue a regulation requiring prompt action “in response to each instance where a court of competent jurisdiction rules that NRC violated applicable law.” The

¹ See [https://www.cadc.uscourts.gov/internet/opinions.nsf/BAE0CF34F762EBD985257BC6004DEB18/\\$file/11-1271-1451347.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/BAE0CF34F762EBD985257BC6004DEB18/$file/11-1271-1451347.pdf)

petitioner also requests that the NRC issue an additional regulation “intended to ensure that public safety and health, protection of the environment, the common defense and security, the reputation and credibility of the NRC as a ‘trusted, independent, transparent, and effective nuclear regulator,’ and prudent stewardship of the national fisc all receive due consideration when the agency does not receive sufficient funding to implement its statutory mandates; and that both that consideration and the circumstances that require it are appropriately brought into the light.”

First Proposed Rule Request

The petitioner requests that the NRC amend its regulations in 10 CFR part 2 to require that in “each instance where a court of competent jurisdiction rules that NRC violated applicable law” the NRC promptly take the following actions:

- evaluate and determine the cause or causes for each violation;
- conduct an “extent of condition” evaluation to determine whether NRC’s implementation of other statutes and regulations (i.e., statutes and regulations beyond those identified by the court in its ruling) are similarly affected;
- implement immediate corrective actions to address any violations identified by the extent of condition evaluation;
- formulate and implement robust corrective actions to prevent recurrence that are based on the cause and extent of condition evaluations; and
- prepare and issue a report to the public that documents these activities.

In addition, the NRC would be required to formally “request review by the U.S. Department of Justice (1) of the adequacy of NRC oversight mechanisms and whether enhancements are warranted...and (2) of whether offenses proscribed by the federal criminal code...formed the basis of or contributed to the adverse court ruling.” The petitioner states that

these amendments “would be effective retroactively, beginning with the 08/13/13 *In re: Aiken County ruling*—because of the extraordinary significance of that ruling.”

Second Proposed Rule Request

The petitioner also requests that 10 CFR part 2 be amended to require that the NRC annually “report to the public each instance where it does not receive sufficient funds reasonably necessary to implement in good faith its statutory mandates....” The petitioner states that this report should include a discussion “of whether NRC (1) was directed to request either no or insufficient funds, and complied with that direction; (2) did request sufficient funds, which were withheld by Congress; or (3) did not request sufficient funds.” The petitioner recommends that the report also include “a discussion of the consequences of each instance with respect to (1) public safety and health; (2) environmental protection; (3) the common defense and security; (4) the reputation/credibility of the agency as a ‘trusted, independent, transparent, and effective nuclear regulator,’ and (5) collateral fiscal impacts (e.g., the ongoing Judgment Fund disbursements to the nation's nuclear utilities flowing from the government’s breach of the NWPA [Nuclear Waste Policy Act] ‘standard contracts’).”

The petitioner asserts that some of the “Benefits to [the] NRC and the Nation” that would be gained as a result of issuing these proposed rules include:

- Enhancing public safety and health;
- Reducing cost;
- Aligning the NRC’s practices with its principles;
- Aligning the NRC’s practices with the tenets it has set out for ensuring a positive safety culture; and

- Aligning the NRC's practices with its mission statement, vision, and organizational values.

VI. Conclusion

The NRC has determined that the petition meets the threshold sufficiency requirements for docketing a petition for rulemaking under 10 CFR 2.802, "Petition for rulemaking—requirements for filing," and the petition has been docketed as PRM-2-15. The NRC will examine the issues raised in PRM-2-15, to determine whether they should be considered in the rulemaking process.

Dated at Rockville, Maryland, this 10th day of February, 2016.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

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